IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

WP(C).No. 25542 of 2004(N)

PETITIONER:

DYUTHISENAN, S/O.MANHERI OTHAYOTH
GOVINDAN NAMBIAR, AGED 40 YEARS,
KOOVERY, P.O.KOOVERY, VIA CHAPPARAPADAVU,
KANNUR (CLERK-CUM-CASHIER).

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SMT.SONIYA.M

RESPONDENTS:

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1. THE SYNDICATE BANK, REPRESENTED BY ITS
GENERAL MANAGER, HEAD OFFICE,
MANIPAL, KARNATAKA STATE.

2. NORTH MALABAR GRAMIN BANK,
KANNUR, P.B.NO. 59, BANK ROAD, KANNUR,
REPRESENTED BY ITS CHAIRMAN.

3. THE BRANCH MANAGER,
NORTH MALABAR GRAMIN BANK,
MUNDAKAYAM, KOTTAYAM.

BY ADV. SRI.M.P.RAMACHANDRAN NAIR
SRI.DEVAN RAMACHANDRAN
SRI.M.P.RAMACHANDRAN NAIR
SRI.DEVAN RAMACHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) 25542/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE P.G. CERTIFICATE ISSUED BY THE UNIVERSITY OF MYSORE TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE APPLICATION DATED 11.3.93 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE CIRCULAR DATED 20.9.1989 ISSUED BY THE 1ST RESPONDENT.

EXT.P4 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P. NO. 3581/1995 DATED 31.10.2003.

EXT.P5 TRUE COPY OF THE COMMUNICATION DATED 15.3.2004 ISSUED BY THE 2ND RESPONDENT.

EXT.R1(1) TRUE COPY OF THE CERTIFICATE NO. 0078 DATED 22.7.2004.

EXT.R1(2) TRUE COPY OF THE LETTER DATED 8.9.2004 ISSUED BY THE 2ND RESPONDENT.

EXT.R1(3) TRUE COPY OF THE ORDER NO. 7805/ENO. 755/INC744/PAIRD/WD/04/0N341 DATED 8.9.2004.

EXT.R1(4) TRUE COPY OF THE LETTER DATED 30.3.1993 NO. 3772/ENO.755/WD/PAIRD/93.

EXT.R1(5) TRUE COPY OF THE LETTER DATED 6.4.1993 SUBMITTED BY THE PETITIONER.

EXT.R1(6) TRUE COPY OF THE LETTER NO. 4733/E. BI. 755/PAIRD/93 DATED 22.4.93.

EXT.R7 TRUE COPY OF TE CIRCULAR NO. 66/PAIRD/17/91 DATED 26.3.1991

EXT.R8(a) TRUE COPY OF THE LETTER NO. 0023/P5C&RDD/1/413/2072 DATED 16.2.95.

EXT.R1(8b) TRUE COPY OF THE LETTER NO. 0023/PSC & RDD 1/435-B/5010.

EXT.R1(8c) TRUE COPY OF THE LETTER NO. 0023/PSC/RDD/1/435-B/6166 DATED 7.2.2001.

EXT.R1(8d) TRUE COPY OF THE LETTER NO. 174/0089/PDIRD (W)/ALC-18. DATED 19.2.2004.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

W.P.© 25542/2004

DATED THIS, THE22ND DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner is an employee in the North Malabar Gramin Bank. He joined service as a Junior Clerk cum Cashier in 1985 and at the time of filing this writ petition, he was working as Clerk-cum-Cashier under the third respondent. According to the petitioner, to improve the working conditions of the employees, the Management of the Bank and the Union had entered into a settlement agreement as per which Bank has to grant Graduation Increment to the employee who is having graduation. Relevant clause thereof is quoted in para 2 of the writ petition which is as follows:

> "Graduation Increment: On and from 1st July, 1990 Clause 10 of the Fifth Biparte Settlement shall stand deleted and employees who are in receipt of graduation allowance in terms of this clause shall be granted two additional increments in lieu of the allowance without affecting their future date of annual increment. Graduate Employees recruited or promoted to clerical cadre or non-graduate who acquire such qualification on or after 1st July, 1990 shall also be

> granted two additional increments, as per the provision existing prior to the Fifth Biparte settlement."

2. Petitioner has passed M.A. Literature from Mysore University as evidenced by Ext.P1 certificate issued by the said University. Based on Ext. P1, he applied for graduation increment, as per Ext.P2 dated 11.3.1993. But the same was rejected on the ground that graduation increments are given only to Graduates and petitioner did not acquire graduation before he become a Post Graduate. According to the petitioner, increments which are granted to graduates cannot be arbitrarily denied to persons who obtained post graduation without undergoing graduation. The respondents denied such benefits to the petitioner based on a circular dated 20.9.1989 issued by the first respondent, which is produced as Ext.P3 herein. Clause (3) of the said circular reads thus:

> "Increments or the allowance are given for graduation. If an employee is a post graduate but not a graduate, he shall not get the graduation increments or graduation allowance".

3. Petitioner submits that Clause 3 is perse illegal, unjust and arbitrary. Earlier, petitioner filed O.P. 3581/1995 and as per Ext.P4 judgment, petitioner was enabled to file a representation in the matter and

the respondents therein were also directed to consider and pass orders on such representation to be filed by the petitioner within four months. The judgment is dated 31.10.2003. Curiously enough, without passing any order within the time stipulated by this Court, Ext.P5 letter dated 15.3.2004 was sent by the second respondent to the petitioner stating that cases like petitioner's are referred to IBA for a decision on the matter and it is informed that a decision is likely to be taken while arriving at the 8th Bipartite Settlement, talks for which are already in progress. Petitioner was also requested to bear with them till the settlement is finalized.

4. Nothing is stated in the counter affidavit as to what happened to the bipartite settlement and whether persons like petitioners were also extended the benefit claimed or not. Thus, the representation is not finally disposed of despite the specific direction issued by this Court, as stated earlier. However, petitioner subsequently acquired a Law Degree in 2004 and graduation increment was given to him based on the acquisition of that Degree. But that does not give a quietus to the issue since if the petitioner is entitled for graduation increment on acquiring M.A. Degree, he will be entitled to such increments from a retrospective date and he will be entitled for the difference in the amount. Since the respondents have not given care to consider the representation even after Ext.P5, within a reasonable time

limit, the issue regarding his entitlement has to be considered on merits.

5. A similar case came up for consideration before the Bombay High Court in **Mr. Menino Furtado v. State Bank of India and Another** (W.P. 446/1993). A copy of the judgment in the said case was made available to me by the learned counsel for the petitioner. Para 8 of the said judgment reads as follows:

> In our opinion, one of the objects in introducing the said scheme appears to be based on the concept that better the educational qualifications, more efficient the service. The interpretation sought to be placed on the term "graduate" is too technical. It lays more emphasis on the letter than the spirit. The benefit cannot be availed of by a person who is under graduate; but there should not be any difficulty in extending the said benefit to a person holding a post graduate degree. The higher qualification implies acquiring of lower qualification. A person with higher qualification must be deemed to have more proficiency than a person with lower qualification. The emphasis on the conditions of eligibility for the grant of graduation increment/allowance is of minimum requirement of holding a bachelor's degree. Therefore, if an employee is over qualified, he does not become ineligible for claiming the said benefit. Take an instance, where the minimum qualification required for a typist is speed of 40 w.p.m. A person having a speed of 30 w.p.m. may not qualify for the said post, but a person having a speed of say, 60 w.p.m. cannot be regarded as unqualified or ineligible for the post of typist. The general rule that "larger includes smaller" fittingly applies to the present case. We

> therefore, find that there is absolutely no sound justification or reason for treating an employee with post-graduate degree as being not eligible for the benefit of graduate increment/allowance. The interpretation adopted by the respondent is, in our opinion, arbitrary and it discriminates the petitioner without any reason against employees who holding Bachelor's degree and reap the advantage of the beneficial scheme."

6. I am in complete agreement with the view taken by the Bombay High Court as aforesaid. Even if the post graduation acquired by the petitioner is not subsequent to the acquisition of any degree, respondent has no case that M.A. degree obtained by the petitioner cannot be equated with even to degree. In such circumstances, it has to be held that petitioner also is entitled for graduate increment from the date of his application Ext.P2. Since he has already been given the benefit based on his acquisition of the Degree in Law, the benefit due to him shall be re-calculated and whatever difference in the amount, shall be paid. This shall be done as early as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

P.R. RAMAN,
(JUDGE)

knc/-